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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/429,939	10/29/1999	MICHEL AUTHIER	89003-44	6547
28291 7590 09/28/2007 FETHERSTONHAUGH - SMART & BIGGAR 1000 DE LA GAUCHETIERE WEST SUITE 3300 MONTREAL, QC H3B 4W5 CANADA			EXAMINER FETSUGA, ROBERT M	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 09/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/429,939

Applicant(s)

AUTHIER ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 42-48, 50-57, 59-63 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) 46, 47, 55 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-45, 48, 50-54, 57, 59-63 and 65-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "method" set forth in claim 60, and "means" language set forth in claim 66, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at pages 12-13 of the response filed August 22, 2007 the noted terms are "easily ascertainable by a person skilled in the art". The examiner disagrees. While it may be clear the "means for obtaining a measurement" refers to the prior art temperature sensor 17, the meaning of "means for processing" and "means for repetitively causing" is not clear. While Fig. 2 illustrates a prior art CPU 12, structure corresponding to the "means for processing" and "means for repetitively causing" is not defined at pages 5-6 of the specification. As for the "method" language, no disclosure has been found describing what steps or acts constitute the method. Adding wording to the summary of the invention section does not define the noted terms.

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2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 42-45, 51-54, 60-63, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins et al. '720 and Lively.

The Tompkins et al. '720 (Tompkins) reference discloses a system comprising: a programmed (col. 2 lns. 62-67) controller 12,14; a tub 11; a water heater 26; piping 35; and a pump 24. Re claims 42-45, the controller is programmed for processing a temperature sensor signal (col. 8 lns. 25-32, col. 18 ln. 66 thru col. 19 ln. 12). Therefore, Tompkins teaches all claimed elements except for the provision of an ambient air temperature sensor.

Although the programmed controller of the Tompkins spa system does not include an ambient air temperature sensor, as claimed, attention is directed to the Lively reference which discloses an analogous system which further includes a programmed (col. 8 lns. 32-41) controller (Fig. 3) having an ambient air (col. 6 lns. 41-52) temperature sensor 110,111. Therefore, in consideration of Lively, it would have been obvious to one of ordinary skill in the spa system art to associate an ambient air temperature sensor with the Tompkins programmed controller in order to protect against a damaging air temperature.

Applicant argues at pages 23-24 of the response neither Tompkins nor Lively teach repetitively causing a pump to be activated in response to ambient air temperature. The examiner disagrees. Tompkins clearly teaches repetitively causing a pump to be activated as is evident from consideration of lines 25-32 in column 8, and line 66 in column 18 through line 12 of column 19. Furthermore, Tompkins recognizes the problem of the water in the spa plumbing freezing before the water in the spa tub due to ambient air temperature (col. 19 lns. 13-18). With this in mind, Lively teaches using an ambient air temperature sensor to protect against a damaging air temperature. Consequently, one skilled in the spa art would be motivated to

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combine the Tompkins and Lively disclosures resulting in applicant's claimed invention.

4. Claims 48 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins and Lively as applied to claims 42 and 51 above, and further in view of Janosko.

Although the temperature sensor of the Tompkins spa system is not inside the controller, as claimed, attention is directed to the Janosko reference which discloses an analogous spa system which further includes a temperature sensor 199 inside a controller 196. Therefore, in consideration of Janosko, it would have been obvious to one of ordinary skill in the spa system art to associate controller mounting with the Tompkins temperature sensor in order to reduce installation/manufacturing cost.

Applicant has not substantively argued this ground of rejection.

5. Claims 50, 59 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tompkins and Lively as applied to claims 42 and 51 above, and further in view of Dundas.

The Tompkins system further comprises a blower 28.

Dundas teaches it is common to operate a blower 19 during freezing conditions (col. 4 lns. 22-25). To automate the blower

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operation taught by Dundas with the controller taught by Tompkins would have been obvious in order to enhance freeze protection.

Applicant has not substantively argued this ground of rejection.

6. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

7. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', with a stylized flourish at the end.

Robert M. Fetsuga  
Primary Examiner  
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